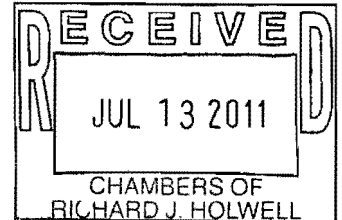


Holwell, J.



UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

MICROSOFT CORPORATION,

Plaintiff,

v.

DATATERN, INC.,

Defendant.

Case No. 11 Cv. 2365 (RJH)

ECF Case

STIPULATION AND ~~PROPOSED~~
ORDER

HOLWELL, J.

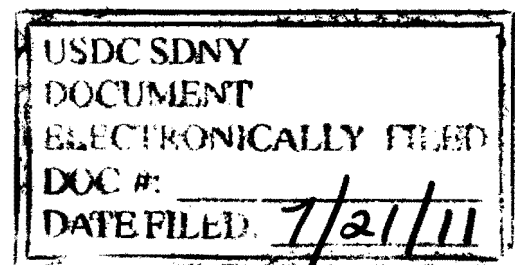
WHEREAS, on June 3, 2011, Defendant DataTern, Inc. ("DataTern") answered the complaint filed by Plaintiff Microsoft Corporation ("Microsoft");

WHEREAS, DataTern's June 3, 2011 Answer did not assert any counterclaims against Microsoft;

WHEREAS, on June 24, 2011, DataTern filed and served its First Amended Answer and Counterclaims on Microsoft through this Court's Electronic Case Filing system;

WHEREAS, in such pleading, DataTern for the first time raised two counterclaims against Microsoft (the "Counterclaims");

WHEREAS, there is a question under the Federal Rules of Civil Procedure regarding whether Federal Rule of Civil Procedure 12 (governing the time to reply to a counterclaim) or Federal Rule of Civil Procedure 15 (governing the time to reply to an amended pleading) applies here;



WHEREAS, the parties wish to avoid confusion and motion practice on this issue and thus have agreed that, for purposes of this action, the period for a reply under Rule 12 will apply (with an additional 3 days for electronic service under Federal Rule of Civil Procedure 6).

IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned counsel, that:

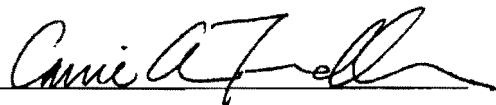
- (1) Microsoft and DataTern have authorized their respective counsel to enter into this Stipulation;
- (2) Microsoft shall have until July 18, 2011 to respond to the Counterclaims; and
- (3) The Stipulation may be signed in counterparts, each of which when signed shall be an original, but all of which shall together constitute one and the same instrument.

An electronic copy of this stipulation shall be deemed an original.

Dated: July 11, 2011
New York, New York

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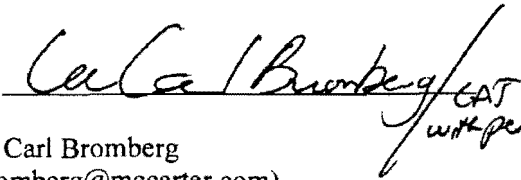
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Attorneys for DataTern, Inc.

SO ORDERED this 19 day of July, 2011


HONORABLE RICHARD J. HOLWELL
UNITED STATES DISTRICT JUDGE